



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

SLR:LDM:KKO
F. #2014V00817

*271 Cadman Plaza East
Brooklyn, New York 11201*

September 2, 2015

By Interoffice mail and ECF

Honorable Raymond J. Dearie
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *United States v. The Proprietary Lease for and any Other Interest Held
by Doris Henriette Yembe in the Real Property and Premises Located
at 2840 South Ocean Boulevard, Apartment no. 209 and Parking Space
no. 166, Palm Beach, Florida 33480*
Civil Docket No. 14-2693 (Dearie, J.)(Reyes, M.J.)

Dear Judge Dearie:

The government respectfully writes to advise the Court that it has elected not to renew its motion for an interlocutory sale of the Defendant in rem in the above-captioned civil forfeiture proceeding. As such, there is no need to proceed with the October 2, 2015 hearing on the interlocutory sale motion. The government further writes, pursuant to its August 12, 2015 filing, to request that the Court schedule a pre-motion conference.

Ms. Yembe Lacks Standing to Participate in this Action

Doris Henriette Yembe lacks standing in this matter because she failed to file an answer to the complaint or a motion pursuant to Rule 12 of the Federal Rules of Civil Procedure, and the time to do so has expired. In light of Ms. Yembe's *pro se* status and her incarceration at the time that an answer or Rule 12 motion was due, the government advised Ms. Yembe of this defect by letter on August 7, 2015. (Docket no. 18, exhibit 3). When Ms. Yembe objected to the government's correspondence, the Court advised her that she "must comply with pretrial requirements" and "would be well advised to engage in the litigation process." (Electronic Order of August 12, 2015). On August 12, 2015, the government filed a letter seeking a pre-motion conference to request permission to strike Ms. Yembe's claim for lack of standing in the event that she fails to file an answer or Rule 12 motion by today's date. (Docket no. 18). On August 27, 2015, Ms. Yembe advised the Court that "the

requested document would be submitted on September 1st [2015].” (Docket no. 20). On August 31, 2015, Ms. Yembe filed both a notice of motion to dismiss pursuant to Rule 12 and a motion for recusal. (Docket nos. 21 and 22). The motion to dismiss, however, was not filed on September 1, 2015. Rather, on that date, Ms. Yembe filed an amended notice clarifying that she did not intend to file a motion to dismiss until the motion to recuse was decided. (Docket no. 23).

Ms. Yembe is incorrect in her assumption that she need not comply with her obligations in this case until the Court rules on her motion to recuse. First, a motion for recusal does not act as a stay on a party's other obligations. *See, e.g., Gunn v. First American Fin. Corp.*, 2014 WL 3896322, at *2 (D. Del. Aug. 7, 2014) (“Gunn’s filing of the motion to recuse did not act as a stay of the deadline to file a second amended complaint.”). Second, a judge is not required to prioritize a motion to recuse over other motions. *See Moore v. Shands Healthcare, Inc.*, --- Fed. Appx. ----, 2015 WL 3499688, at *2 (11th Cir. June 4, 2015) (rejecting appellant’s argument, submitted without citations to any authority, that the district court lacked authority to decide a motion to vacate before deciding the contemporaneously filed motion to recuse). Finally, the Court cannot consider Ms. Yembe’s motion to recuse because she has not cured the defect in her standing and therefore may not participate in this action.

Conclusion

As Ms. Yembe failed to file a timely answer or Rule 12 motion, and did not avail herself of the opportunity to do so after being reminded of her obligations, the government requests, pursuant to its August 12, 2015 filing, that a pre-motion conference be scheduled so that the government can seek to strike Ms. Yembe's claim.

Respectfully submitted,

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By: _____ /s/
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cc: Doris Henriette Yembe, *pro se* (via email)